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SUBJECT: Ukraine's TIP Prosecution Numbers Up, But Most Sentences Lack a Deterrent Bite

(U) Sensitive but Unclassified. Not for Internet Distribution.

11. (SBU) Summary: From 2003 to 2005, convictions for trafficking in persons (TIP) have increased from 29 to 85 a year, but only a third of the convicted traffickers were given jail time. The structure of the General Prosecutor's Office (GPO) and its reluctance to specialize suggests that conviction rates are not likely to increase dramatically and that probation, not incarceration, will continue to be the sentence regularly handed down to convicted traffickers for the foreseeable future. Post continues to work with the GPO to make the case that it should institute changes that would address these issues. End Summary.

CONVICTIONS UP, BUT MOST TRAFFICKERS GET PROBATION

12. (SBU) The State Judicial Administration reported that in 2005 the courts handled 95 TIP cases with 85 resulting in convictions compared to 74 cases and 62 convictions in 2004, and 41 cases and 29 convictions in 2003. Most TIP convictions, however, result in traffickers being given probation instead of jail time. In 2005, only 47 out of 115 people convicted for TIP received jail time, with 22 out of 67 in 2004, and 11 out of 32 in 2003.

13. (SBU) Judges and prosecutors both contributed to the still relatively low numbers of convictions and the light sentences. Among judges there remains a lack of understanding of the problem, and corruption continues to play a role. Prosecutors maintain a cautious approach to TIP cases, reflecting both the lack of specialized TIP trial training and the difficulty in obtaining evidence from abroad in a timely manner (ref A). Weak sentences, we have been told, are often a result of an informal agreement between judges and prosecutors. Prosecutors are afraid of losing a case, as statistics drive their professional advancement, while the lack of evidence in many cases leads both judges and prosecutors to agree to pursue probation rather than jail time. The latter requires greater effort on the part of the prosecutor and often results in an appeal from the defendant. The result: the prosecutor does not lose a case, the defendant is not imprisoned, and the judge has finalized a case with his/her sentence not likely to be appealed.

GPO STRUCTURE LIMITS EFFECTIVE PROSECUTION

14. (SBU) In October 2005, the GPO, at least partly in response to our urging, made TIP one of its five priority crimes and appointed one TIP prosecutor in each region. Unfortunately, the oversight prosecutor as opposed to the trial prosecutor was given the responsibility for TIP in each of the 27 regions, which means that the prosecutor trying the case rarely has experience in TIP cases. (Note: There are several categories of prosecutors in Ukraine: oversight prosecutors, investigative prosecutors, and trial prosecutors. They operate out of three distinct departments both at the national and regional levels.) The GPO has to date rejected our suggestion to create a specialized TIP trial prosecutors unit. General Prosecutor Medvedko has insisted that his generalist prosecutors can successfully handle all types of cases (ref B).

15. (SBU) The lack of a TIP specialization within the GPO ranks has created a challenge for designing a training curriculum to strengthen TIP prosecution capabilities of trial prosecutors, as the number of trial prosecutors in Ukraine, a country of 47 million inhabitants, is close to 1,500. Nevertheless, post will proceed with initial training seminars on TIP prosecutions at the Prosecutor's Academy this spring, and will continue to urge the GPO to establish a specialized TIP trial prosecution unit.

GWALTNEY